IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

OP.No. 3734 of 2003(T)

PETITIONER:

V.J.PAULSON,
CHAUFFEUR GRADE II, O/O. THE EXECUTIVE ENGINEER,
TOURISM GARAGE, THYCAUD, THIRUVANANTHAPURAM.

BY ADV. SRI.M.C.JOHN
SRI.C.PRABIN BENNY

RESPONDENTS:
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1. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY (TOURISM) DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE DIRECTOR,**
   TOURISM, PARK VIEW, THIRUVANANTHAPURAM.

3. **M.G.SUSEELAN,**
   CHAUFFEUR GRADE I, DEPARTMENT OF TOURISM,
   RAMA NILAYAM GUEST HOUSE, THRISSUR.

4. **K.K.ARAVINDAKSHAN,**
   CHAUFFEUR GRADE I, DEPARTMENT OF TOURISM,
   GOVERNMENT GUEST HOUSE, ERNAKULAM.

5. **U.J.JOHN,**
   CHAUFFEUR, GUEST HOUSE, IDUKKI.

BY ADV. SRI.P.RAVINDRAN
SRI.N.K.KARNIS
GOVERNMENT PLEADER SMT.T.B.RAMANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. MO.3734/2003

ORDER ON CMP. NO.6634/03, 14657/03 IN OP. 3734/03

DISMISSED

03.08.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PAY REVISION ORDER NO.GO(P) 3000/1998/FIN. DT. 25.11.98.

EXT.P2:- COPY OF THE REPRESENTATION DT. 6.6.02 BEFORE THE 2ND RESPONDENT.

EXT.P3:- COPY OF THE PROCEEDINGS NO.E4/18048/00 DT.8.7.02 OF THE 3ND RESPONDENT.

EXT.P4:- COPY OF THE JUDGMENT IN OP. 23227/2000 DT.18.2.02.

EXT.P5:- COPY OF THE CIRCULAR NO.E3-14094/2000 DT. 1.9.6.02 OF THE 2ND RESPONDENT.

EXT.P6:- COPY OF THE ORDER NO.E3/14094/2000 DT. 17.9.02 OF THE 2ND RESPONDENT.

EXT.P7:- COPY OF THE COMMUNICATION NO.E3-14094/2000 DT. 4.12.02 OF THE 2ND RESPONDENT.

EXT.P8:- COPY OF THE SPECIAL RULES GO(P) NO.362/95/GAD DT. 29.9.95.

.EXT.P9:- COPY OF THE ORDER NO.B1-2732/89 DT. 2.2.89 PROMOTING THE 3RD RESPONDENT AS CHAUFFEUR GR.I.

EXT.P10:- COPY OF THE ORDER NO.E3-155219/02 DT. 3.2.03.

EXT.P1:- COPY OF THE ORDER DT. 17.5.03 ISSUED BY THE 2ND RESPONDENT.

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OP. NO.3734/2003

EXT.R5(a):- COPY OF THE MEMO OF ADVICE DT. 8.6.96.

EXT.R5(b):- COPY OF THE REPRESENTATION SUBMITTED BY THE 5TH REPSO BEFORE THE 2ND RESPONDENT DT. 3.1.01.

EXT.R5(c):- COPY OF THE FORWARDING LETTER ISSUED BY THE MANAGER OF IDUKKI GUEST HOUSE, DT. 25.4.02.

EXT.R5(d):- COPY OF THE ORDER DT. 23.12.02 OF THE 2ND RESPONDENT.

EXT.R5(e):- COPY OF THE ORDER OF THE 2ND RESPONDENT BEARING NO.E3-155219/2000 DT. 3.2.2003.

/TRUE COPY/

P.S. TO JUDGE

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.Nos.3734/2003-T & 3265/2006-L

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Dated this the 3rd day of August, 2007.

JUDGMENT

"CR"

The petitioner in the former among the captioned matters is the additional 3rd respondent in the latter. The parties are referred to in this judgment, going by their status in WP(C).No.3265/2006. The other private respondents in O.P.3734/2003 are not being referred to since they had not gone for any training that would be referred to during the course of this judgment and having not pressed any submissions or contentions at the hearing of these writ petitions.

2. The petitioner in WP(C).3265/2006 was appointed as Chauffeur Grade II in the Department of Tourism. The additional 3rd respondent was so appointed thereafter. The method of recruitment in the Department

was then governed by the executive orders and such situation continued until Special Rules for the Kerala Tourism Subordinate Services, 1995, hereinafter referred to as the "Special Rules", were made, issued and published in the Gazette dated 29th September, 1995. A perusal of Order No.E4-18048/99 dated 8-7-2002 (Ext.P3 in O.P.3734/2003) would show that the total strength of Chauffeurs at that time was 84 and the total strength of Chauffeurs was taken into consideration for fixing higher grade following 1:1 ratio thereby reckoning 42 Chauffeurs as Grade I and 42 Chauffeurs as Grade II. This, obviously, shows that Chauffeur Grade I and Chauffeur Grade II came into being as two different categories for the first time as per the Special Rules. Therefore, for all intents and purposes, as on the date of coming into force of the Special Rules, the Chauffeurs in service in the Department of Tourism were a composite category, going by the situation obtained as noticed above.

3. As per the Special Rules, Chauffeur Grade I, Steward and Chauffeur Grade II are category Nos. 8, 9 and 11 respectively. Steward is a category among the feeder categories for promotion to the category of Manager Grade III at Sl. No.5.

4. The method of appointment to the category of Steward is by promotion, by transfer and in the absence of qualified persons for those modes, by direct recruitment. 75% of the posts are to be filled up by promotion and 25% by transfer "of other categories such as Electrician, Telephone Operator, Chauffeur Grade II, Plumber and Garden Supervisor based on the length of service".

5. Reverting to Rule 5 of the Special Rules, it can be seen that the qualification prescribed for appointment by transfer as well as promotion to the category of Steward is

made in a homogeneous manner prescribing four indicia. They read as follows:

Category	*Method of appointment*	*Qualification*
9. Steward	By transfer/ promotion	1. Pass in Standard IV. 2. Experience in Bungalow Management and Catering in Indian, European and other foreign styles. 3. Knowledge of keeping accounts of catering and stock of houses. 4. Minimum five years' service in the Department of Tourism.

6. A close examination of the aforesaid provisions would show that in making the Special Rules, while different categories have been brought together to be the zone of consideration for appointment as Steward by transfer dependent upon the length of service going by Rule 3 of the Special Rules, the qualifications prescribed as noticed above are not that which could be acquired by all the categories

which are so brought into the zone of consideration. One would not rationally and reasonably assume that the Electrician, Telephone Operator, Plumber and Garden Supervisor would have the opportunity to gain experience in catering in Indian, European and other foreign styles. It would also be quite unreasonable to assume that they, in the common course of their employment as Government servants in the categories to which they belong, would gain experience or knowledge of keeping accounts of catering and stock of houses. Equally, it does not suit the situation to expect them to gain experience in bungalow management. Therefore, the prescription of the four limbs as qualifications for being considered for appointment as Steward by transfer/promotion has to be taken as either wholly irrational or requiring to be read down to be applied rationally, having regard to the different categories brought into a common zone of consideration for appointment by transfer as Steward and for appointment by promotion to

that category. 75% of posts are to be filled by promotion of Butler/Caretaker and Cook Grade-I. A ratio is also to be maintained from among them for promotion, going by Rule 3 (9)(a). Therefore, the experience and knowledge referable to Entries 2 and 3 in Rule 5(9) of the Special Rules can be rationally and reasonably referred only to such experience and knowledge that could be gained by those who can aspire for being considered for promotion as against 75% quota. That is, what could be called as promotion quota. It does not rationally and reasonably suit those who would fall for consideration for appointment by transfer. Therefore, the reasonable and rational mode in which Rule 5(9) of the Special Rules can continue to exist as it is and operate, is to read that the qualifications at Sl.Nos.1 and 4 would be the relevant qualifications for being considered for appointment by transfer while the experience and knowledge prescribed at Sl.Nos.2 and 3 under that rule are qualifications relevant for the purpose of promotion under the 75% quota.

7. Viewed in this angle, it has to be taken that appointment by transfer to the 25% of the posts of Steward has to be on the basis of the qualifications, pass in Standard IV and minimum five years' experience in the Department of Tourism and, by transfer appointment has to be based on the length of service thereby meaning the length of service in the Department.

8. The next issue that arises for decision, having regard to the contentions of the parties, is as to whether the placement of the petitioner in WP(C).No.3265/2006 as Chauffeur Grade I before the coming into force of the Special Rules denudes him of the entitlement to be considered as available in the feeder category of Chauffeur Grade II as on the date of the commencement of the Special Rules and thereby to be considered for appointment by transfer by taking into consideration his total length of

service. That question, as of now, is only incidental because, the parties including the State, stand governed by the judgment of the Division Bench in W.A.No.741/2002 [Ext.P13 in WP(C).No.3265/2006], the last among the judgments inter se the parties, in which it has been categorically laid down that the appointment of the petitioner as Steward on 17-5-2003 and the additional 3rd respondent as such in 2004 stand. Therefore, the only question that was left for consideration was as to whether the petitioner and the 3rd respondent were entitled to any placement as Steward with effect from any earlier point of time. As already noticed, when the field was occupied by the executive orders, Chauffeurs formed a single category which had two grades and therefore, the reference to Chauffeur Grades I and II before the coming into force of the Special Rules is insufficient to treat them as belonging to two categories and to deprive those who were then in Grade I of their entitlement to be considered for appointment by

transfer as Steward.

9. The result of the aforesaid discussion is that the petitioner and the 3rd respondent are entitled to be considered for appointment by transfer as Steward against 25% quota worked out on the basis of the date of application of the Special Rules and such placement has to be made without reference to the qualifications prescribed at Sl.Nos.2 and 3 under Rule 5(9) of the Special Rules. It is so declared. Following this declaration, Ext.P14 in WP(C). No.3265/2006 is quashed and the State and the Director of Tourism are directed to give effect to the aforesaid declaration by fixing the respective dates on which the petitioner and the additional 3rd respondent would be entitled to be considered as appointed by transfer to the category of Steward. If any other employee is entitled to be heard in relation to such issue, they would also be heard and a final decision taken in that regard within an outer limit of

four months from the date of receipt of a copy of this judgment. However, the aforesaid declarations as to law shall bind and shall be applied in taking the decision as afore-directed.

The writ petitions are disposed of in the above terms.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.Nos.3734/2003-T & 3265/2006-L

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JUDGMENT

Dated: 3rd August, 2007.